

(a) The acquiring person and all other persons required by the act and these rules to file notification filed notification with respect to an earlier acquisition of voting securities of the same issuer;

(b) The waiting period with respect to the earlier acquisition has expired, or been terminated pursuant to §803.11, and the acquisition will be consummated within 5 years of such expiration or termination; and

(c) The acquisition will not increase the holdings of the acquiring person to meet or exceed a notification threshold greater than the greatest notification threshold met or exceeded in the earlier acquisition.

Examples: 1. Corporation A acquires 15 percent of the voting securities of corporation B and both "A" and "B" file notification as required. Within five years of the expiration of the original waiting period, "A" acquires additional voting securities of B but not in an amount sufficient to meet or exceed 25 percent of the voting securities of B. No additional notification is required.

2. In example 1, "A" continues to acquire B's securities. Before "A's" holdings meet or exceed 25 percent of B's outstanding voting securities, "A" and "B" must file notification and wait the prescribed period, regardless of whether the acquisition occur within five years after the expiration of the earlier waiting period.

3. In example 2, suppose that "A" and "B" file notification at the 25 percent level and that, within 5 years after expiration of the waiting period, "A" continues to acquire voting securities of B. No further notification is required until "A" plans to make the acquisition that will give it 50 percent ownership of B. (Once "A" holds 50 percent, further acquisitions of voting securities are exempt under section 7A(c)(3).)

4. Assume that "C" is an institutional investor whose prior acquisitions of corporation D's voting securities were exempt under §802.64. "C" now proposes to purchase additional voting securities of D which will result in holdings exceeding 15 percent and \$25 million. "C" and "D" therefore file notification and observe the waiting period. Under this section within the 5 years following the expiration of the waiting period "C" may further increase its holdings in D to any amount below 25 percent (regardless of dollar value) without again filing notification. Section 802.64 exempted "C" from filing notification at the thresholds defined in subparagraphs (1) or (2) of §801.1(h); thereafter, since "C" filed notification with respect to an acquisition which resulted in its holding more than 15 percent of D's voting securities val-

ued at more than \$25 million, the next notification threshold "greater than the greatest notification threshold met or exceeded in the earlier acquisition" is 25 percent of D's voting securities. (See paragraph (c) of this section and §801.1(h)(3).)

5. This section also allows a person to recross any of the threshold notification levels—15 percent/\$15 million, 15 percent if greater than \$15 million, 25 and 50 percent—any number of times within 5 years of the expiration of the waiting period following notification for that level. Thus, if in example 1, "A" had disposed of some voting securities so that it held less than 15 percent of the voting securities of B, and thereafter had increased its holdings to more than 15 percent but less than 25 percent of B, notification would not be required if the increase occurred within 5 years of the expiration of the original waiting period. Similarly, in examples 2 and 3, "A" could decrease its holdings below, and then increase its holdings above, 25 percent and 50 percent, respectively without filing notification, if done within 5 years of the expiration of those respective waiting periods.

§802.23 Amended or renewed tender offers.

Whenever a tender offer is amended or renewed after notification has been filed by the offeror, no new notification shall be required, and the running of the waiting period shall be unaffected, except as follows:

(a) If the number of voting securities to be acquired pursuant to the offer is increased such that a greater notification threshold would be met or exceeded, only the acquiring person need again file notification, but a new waiting period must be observed;

(b) If a noncash tender offer is amended to become a cash tender offer, (1) one copy of the amended tender offer shall be filed in the manner prescribed by §803.10(c) with the Federal Trade Commission and Assistant Attorney General, and (2) subject to the provisions of §803.10(b)(1), the waiting period shall expire on the 15th day after the date of receipt (determined in accordance with §803.10(c)) of the amended tender offer, or on the 30th day after filing notification, whichever is earlier; or

(c) If a cash tender offer is amended to become a noncash tender offer, (1) one copy of the amended tender offer shall be filed in the manner prescribed by §803.10(c) with the Federal Trade

Commission and Assistant Attorney General, and (2) subject to the provisions of § 803.10(b)(1), the waiting period shall expire on the 15th day after the date of receipt (as determined in accordance with § 803.10(c)) of the amended tender offer, or on the 30th day after filing notification, whichever is later.

Examples: 1. Assume that corporation A makes a tender offer for 20 percent of the voting securities of corporation B and that "A" files notification. Under this section, if A subsequently amends its tender offer only as to the amount of consideration offered, the waiting period so commenced is not affected, and no new notification need be filed.

2. In the previous example, assume that A makes an amended tender offer for 27 percent of the voting securities of B. Since a new notification threshold will be crossed, this section requires that "A" must again file notification and observe a new waiting period. Paragraph (a) of this section, however, provides that "B" need not file notification again.

3. Assume that "A" makes a tender offer for shares of corporation B. "A" includes its voting securities as part of the consideration. "A" files notification. Five days later, "A" changes its tender offer to a cash tender offer, and on the same day files copies of its amended tender offer with the offices designated in § 803.10(c). Under paragraph (b) of this section, the waiting period expires (unless extended or terminated) 15 days after the receipt of the amended offer (on the 20th day after filing notification), since that occurs earlier than the expiration of the original waiting period (which would occur on the 30th day after filing).

4. Assume that "A" makes a cash tender offer for shares of corporation B and files notification. Six days later, "A" amends the tender offer and adds voting securities as consideration, and on the same day files copies of the amended tender offer with the offices designated in § 803.10(c). Under paragraph (c) of this section, the waiting period expires (unless extended or terminated) on the 30th day following the date of filing of notification (determined under § 803.10(c)), since that occurs later than the 15th day after receipt of the amended tender offer (which would occur on the 21st day).

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§ 802.30 Intraperson transactions.

An acquisition (other than the formation of a joint venture or other corporation the voting securities of which will be held by two or more persons) in which, by reason of holdings of voting

securities, the acquiring and acquired persons are (or as a result of formation of a wholly owned entity will be) the same person, shall be exempt from the requirements of the act.

Examples: 1. Corporation A merges its two wholly owned subsidiaries S1 and S2. The transaction is exempt under this section.

2. Corporation B creates a new wholly owned subsidiary. The transaction is exempt under this section.

3. Corporation A, which controls corporation B by a contract giving A the power to name a majority of B's directors, but which holds no voting securities of B, proposes to acquire 15 percent of B's voting securities. The transaction is not exempt under this section, since "A" and "B" are not the same person "by reason of holdings of voting securities."

4. Corporation A repurchases a portion of its voting securities in a series of transactions involving numerous sellers. All of these acquisitions are exempt under this section. The redemption or retirement of securities would likewise be exempt under this section.

5. Corporations A and B (which are not included within the same person) form a new corporation, C. A and B will each hold C's voting securities upon formation. This section is inapplicable, and the acquisitions of C's voting securities by A and B are not exempt.

§ 802.31 Acquisitions of convertible voting securities.

Acquisitions of convertible voting securities shall be exempt from the requirements of the act.

Example: This section applies regardless of the dollar value of the convertible voting securities held or to be acquired and even though they may be converted into 15 percent or more of the issuer's voting securities. Note, however, that subsequent conversions of convertible voting securities may be subject to the requirements of the act. See § 801.32.

§ 802.35 Acquisitions by employee trusts.

An acquisition of voting securities shall be exempt from the notification requirements of the act if:

(a) The securities are acquired by a trust that meets the qualifications of section 401 of the Internal Revenue Code;

(b) The trust is controlled by a person that employs the beneficiaries and,